

UNITED STATES OF AMERICA)
)
) CAUSE NO. 3:07cr135-RLM
)
JUSTIN LAVON AVILA (1))

FINDINGS AND RECOMMENDATION
OF THE MAGISTRATE JUDGE
UPON A PLEA OF GUILTY

On December 18, 2007, the Honorable Robert L. Miller, Jr., Chief Judge, referred this case to the undersigned to make findings as to whether the defendant (1) is competent to enter a plea; (2) knowingly and voluntarily wishes to enter a plea to the charge(s); (3) understands the charge(s); (4) whether there exists a factual basis for the charge(s); and a recommendation as to whether a plea of guilty should be accepted by the United States District Court Judge. On

January 8, 2008 at 2:00 p.m. (EST), a hearing was held on the defendant's request to enter a plea of guilty. Appearing for the United States was Assistant United States Attorney Donald J. Schmid. Appearing for the defendant was H. Jay Stevens; the defendant was personally present. With the written consent of defendant, his counsel and the counsel for the United States, the undersigned proceeded to conduct the hearing.

In consideration of that hearing and the statements made by the defendant under oath on the record and in the presence of counsel, the remarks of the Assistant United States Attorney and of counsel for defendant,

I FIND as follows:

- (1) that defendant is competent to plead guilty;
- (2) that the defendant understands that his answers may later be used against him in a

(3) that defendant understands the nature of the charge against him to which the plea is offered;

(4) that the defendant understands the charge and what the maximum possible sentence is, including the effect of the supervised release term, and defendant understands that the sentencing guidelines apply and that the Court may depart from those guidelines under some circumstances;

(5) that the defendant understands his right to trial by jury, to persist in his plea of not guilty, to the assistance of counsel at trial, to confront and cross-examine adverse witnesses, and his right against compelled self-incrimination; to appeal his conviction, if convicted, and that the defendant has knowingly and voluntarily waived those rights, and wishes to plead guilty.

(6) that the plea of guilty by the defendant has been knowingly and voluntarily made and is not the result of force or threats or of promises apart from the plea agreement between the parties; and,

(7) that there is a factual basis for the defendant's plea.

In light of those findings, I now recommend that; (1) the Court accept the defendant's plea of guilty (2) that the defendant be adjudged guilty of **Counts 1 and 2** of the Information, in violation of Title 18, United States Code, Section 924(c), have sentence imposed. A Presentence Report has been ordered. Should this Report and Recommendation be accepted and the Defendant adjudged guilty, sentencing has been scheduled for **March 20, 2008 at 9:00 a.m.**(EST), before Chief Judge Robert L. Miller, Jr. Objections to the Findings and Recommendation are waived unless filed and served within ten (10) days. 28 U.S.C. § 636(b)(1)(B).

DATED: January 8, 2008

s/Christopher A. Nuechterlein
Christopher A. Nuechterlein
United States Magistrate Judge